(24,311)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 567.

EVENS AND HOWARD FIRE BRICK COMPANY AND UNION SAND AND MATERIAL COMPANY, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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1 THE UNITED STATES OF AMERICA:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an order allowing appeal, filed in the Clerk's Office of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein Evens & Howard Fire Brick Company and Union Sand & Material Company, Intervening Petitioners, in the case of The United States of America, Complainant, vs. The Terminal Railroad Association of St. Louis, et al., Defendants, are Appellants, and you are Appellee, to show cause, if any there be, why the order and decree entered against the said Appellants, as in said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, Senior Circuit Judge of the United States for the Eighth Circuit, this 20th day of June, in the year of our Lord one thousand nine hundred and fourteen.

WALTER H. SANBORN,
United States Circuit Judge.

Service of the foregoing citation is hereby acknowledged this June 26, 1914.

_____

United States Attorney.

2 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I do hereby certify that at the city of St. Louis in the Eastern District of Missouri on the 26th day of June, A. D. 1914, I executed this writ by delivering a true and correct copy of this writ to Charles A. Houts, U. S. District Attorney.

EDW. F. REGENHARDT,
U. S. Marshal.

1 service $2.00.

By W. G. DAVIZ, *Deputy.*

[Endorsed:] No. 5250. United States District Court. Eastern Division of the Eastern Judicial District of Missouri. United States of America against Terminal Railroad Assn. of St. Louis, et al. Evens & Howard Fire Brick Co. and Union Sand & Material Co., Intervening Petitioners & Appellants. Citation. Filed Jun- 27, 1914. W. W. Nall, Clerk. Return.

3 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

Be it Remembered, that heretofore, to-wit: on the 23rd day of June 1914 there was filed in the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri in the cause No. 5250, wherein United States of America is Complainant and the Terminal Railroad Association of St. Louis and others are Defendants, and the Evens and Howard Fire Brick Company and the Union Sand and Material Company are Intervening Petitioners, a Præcipe of said Intervening Petitioners for a transcript of the record upon an appeal allowed said Intervening Petitioners in said cause, which said præcipe is in words and figures, as follows, to-wit:

4 (*Intervening Petitioners' Præcipe.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants; Union Sand & Material Company and Evens & Howard Fire Brick Company, Intervening Petitioners.

Intervening Petitioners' Præcipe.

The Clerk will please prepare and transmit to the Clerk of the United States Supreme Court a typewritten copy and transcript of the following records, papers and documents in the above entitled cause:

First. Mandate of the Supreme Court.
Second. Interlocutory Decree.
Third. Final Decree.
Fourth. Motion of The Terminal Railroad Association to amend final decree.
Fifth. Motion of Evens & Howard Fire Brick Company to modify and amend final decree.
Sixth. Motion of Union Sand & Material Company to modify and amend final decree.
Seventh. Supplemental motions of fifty-three other parties to amend final decree. (The Motion of fifty-three other parties to amend final decree should be combined into one in the transcript, and the Clerk will kindly do so).

5 Eighth. Petition of Union Sand & Material —, Evens & Howard Fire Brick Company, and Fifty-three other parties for leave to file said petitions, and order granting leave to file same but denying intervention.

Ninth. Petition of Evens & Howard Fire Brick Company and Union Sand & Material Company for appeal, and order of court allowing their appeal.

Tenth. Assignment of Errors of Evens & Howard Fire Brick Company and Union Sand & Material Company.

Eleventh. Order granting appeal of Evens & Howard Fire Brick Company and Union Sand & Material Company.

Twelfth. Citation and Bond of Evens & Howard Fire Brick Company and Union Sand & Material Company, and approval of same.

JOHN F. LEE,
GEO. M. BLOCK,
Attorneys for Union Sand & Material Company and Evens & Howard Fire Brick Company.

Copy Received June 23, 1914.
CHARLES A. HOUTS,
United States Attorney.

Endorsed: Filed June 23rd 1914. W. W. Nall, Clerk.

And afterwards, to-wit: on July 7th 1914 there was filed by the United States of America a præcipe for additional parts of the record to be included in the transcript of the record on said appeal, which said præcipe is in words and figures, as follows, to-wit:

6 (*Præcipe of Complainant.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, Plaintiff,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants; Union Sand & Material Company and Evens & Howard Fire Brick Company, Intervening Petitioners.

Præcipe of the United States Specifying Additional Matter.

To the Clerk:

You will please incorporate into the transcript on the appeal of the Union Sand & Material Company, et al., intervenors, from the order entered June 20, 1914, in the above-entitled cause, the following matter in addition to that specified in the intervening petitioners' præcipe, viz:

1. Petition of the United States appealing to the Supreme Court of the United States from the decree entered on March 2nd 1914.
2. The allowance of the appeal in open court, on March 27th, 1914.
3. The assignment of errors filed by the United States at the time it appealed from the said final order or decree.
4. The citation on said appeal, and the waiver of service thereof.

(Signed) CHARLES A. HOUTS,
United States Attorney.

Endorsed: Filed July 7th, 1914. W. W. Nall, Clerk.

The papers, pleadings and proceedings called for by the foregoing præcipes (with the exception of the citation called for in item four of the præcipe of the United States, which original citation was attached to the transcript furnished in behalf of the United States and transmitted to the Supreme Court of the United States)
7 are in words and figures, as follows, to-wit:

(Mandate of Supreme Court of United States.)

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the Honorable the Judge of the District Court of the United States for the Eastern District of Missouri. Greeting:

Whereas, lately in the Circuit Court of the United States for the Eastern District of Missouri, in a cause between The United States of America, complainant, and The Terminal Railroad Association of St. Louis et al., defendants, No. 5250, wherein the decree of the said Circuit Court, entered in said cause on the 6th day of June, A. D. 1910, is in the following words, viz:

Whereas upon full argument and careful consideration of this case two of the judges of this court were of the opinion that the complainant should prevail and two of the judges of this Court were of the opinion that the defendants should prevail, and each of them is of the same opinion still, and the Supreme Court of the United States has dismissed the certificate of this division of opinion and has remanded this cause to this court with direction to proceed in conformity with the laws of the United States

Whereas Honorable Charles A. Houts, United States Attorney for the Eastern District of Missouri, has made a motion on behalf of the complainant that this court listen to a reargument of this case, and the judges are unanimously of the opinion that further agreement thereof would be futile;

And Whereas the complainant cannot prevail because only two of the judges are of the opinion that it is entitled to any relief. whil- two are of the opinion that it is entitled to no relief.

It is hereby ordered that the motion for a reargument of this case be, and the same is hereby, denied and that the bill of complainant be, and it is hereby dismissed.

8 WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges."

as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, full and at large appears.

And whereas, in the present term of October, in the year of our

Lord one thousand nine hundred and eleven, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged, and decreed by this court that the decree of the said Circuit Court in this cause be, and the same is here, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the District Court of the United States for the Eastern District of Missouri for further proceedings to be had therein in conformity with the opinion of this court.

April 22, 1912.

You therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 23rd day of May, in the year of our Lord one thousand nine hundred and twelve.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Endorsed: Filed June 3rd, 1912. W. W. Nall, Clerk.

9 (*Interlocutory Decree.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants.

Interlocutory Decree on Mandate.

This cause came on to be heard at this term on the motion of the United States that an interlocutory decree be entered pursuant to the opinions of the Supreme Court reported in 224 U. S. 382, 411, and 223 U. S., 420. The United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of this Court dismissing this cause on June 8, 1910, and the Supreme Court of the United States at its October Term, 1911, having heard the appeal upon a transcript of the record and having thereupon, on the 22nd day of April, 1912, ordered, adjudged and decreed that the said decree of this Court in this cause be reversed and that said cause be remanded to this court for further proceedings in accordance with the mandate of the Supreme Court in this cause bearing date May 23, 1912, which was recorded in this court on June 3, 1912, The Honorable Jacob

Trieber, United States District Judge, on June 11, 1912, entered an interlocutory decree pursuant to the mandate, but subsequently, on the petition for a writ of prohibition, the Supreme Court
10 of the United States rendered a decision to the effect that he was without jurisdiction to render such decree and that this case could be considered and determined only by a court composed of Circuit Judges in accordance with the provisions of the Expedition Act, Chap. 544, 32 Stat. 823.

Now, therefore, in obedience to the mandate of the Supreme Court and in accordance with the opinions of that court, to which reference has been made, it is hereby ordered, adjudged and decreed that the interlocutory decree hereinbefore rendered on June 11, 1912, by the Honorable Jacob Trieber, District Judge, be, and the same is hereby, set aside and for naught held pursuant to the opinion of the Supreme Court; that within sixty days after the entry of this decree the Terminal Railroad Association of St. Louis and the fourteen railroad companies defendants herein, their successors and assigns, if any, and such other companies as may have become co-members with the fourteen defendant railroad companies, if any, shall submit to this Court a plan, upon which the defendants herein shall have agreed, for the reorganization of the contracts, agreements, arrangements and leases, and the use and operation of the properties and terminal facilities of the defendants herein, between the Terminal Railroad Association of St. Louis, Missouri, and its fourteen co-defendant railroads, as aforesaid, as will make said contracts conform in all respects to the terms and conditions hereinafter mentioned.

First. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company on a plane of equality in respect of benefits and burdens with the present proprietary companies.

11 Second. Such plan or reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms and regulations as will, in respect of use, character and cost of service, place every such company as nearly on an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

Third. By eliminating from the present agreement between the Terminal Company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal Company.

Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis, or other junction points, and then rebilling traffic destined to St. Louis, or to points beyond.

Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating in the so-called one hundred mile area, that is not equally or in like manner applied in respect of all other traffic of like character originating outside of that area.

Sixth. By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the Terminal or proprietary companies which shall arise after a final decree in this cause, may be submitted to this Court upon a petition filed in this cause, subject to review by appeal in the usual manner.

Seventh. It is further ordered, adjudged and decreed that the said parties also present at the same time a proposed form of final decree in accordance with the directions of the Supreme Court
12 in its mandate and opinion, which shall contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Company, or the mode of billing traffic passing over its lines, or the establishing of joint rates or routes over its lines, or any other power conferred by law upon such commission.

Eighth. Upon the failure of the parties defendant to come to an agreement within sixty days from the entry of this decree which is in substantial accord herewith, the Court will, after hearing the parties to this cause, upon a plan for the dissolution of the combination between Terminal Company, The Wiggins Ferry Company, the Merchants' Bridge Company, and the several terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete disjoinder of the three systems, as may be necessary, enjoining the defendants, singly or collectively, from any exercise of control or dominion over either of the said terminal systems, or their related constituent companies, through lease, purchase or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends, directly or indirectly, or from any future combination of the said systems in evasion of such decree or any part thereof.

WALTER H. SANBORN,
WALTER I. SMITH,
Circuit Judges.

April 30, 1913.

Received and filed and entered June 16, 1913.
W. W. NALL, *Clerk.*

13 (*Opinions of Court on Entry of Interlocutory Decree.*)

In the District Court of the United States for the Eastern District of Missouri.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants.

SANBORN, *Circuit Judge:*

The United States moves the Court to enter the preliminary decree in this case specified in the opinion of the Supreme Court in

224 U. S. 410, to the effect that the defendants present for the consideration of this Court a proposed reorganized contract and final decree. We agree and shall insist that the true intent and meaning of the direction of the Supreme Court that "any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one-hundred-mile area that is not equally and in like manner applied in respect of all other traffic, of like character originating outside of that area," shall be abolished and of every other direction of that court in its opinion and mandate in this case must be carried into complete effect by the new contract and the final decree. In our opinion the interlocutory decree now to be entered as clearly so directs as does the opinion and mandate of the Supreme Court.

14 The question presented by the motion now in hand is not what the final decree shall be, nor by what terms the abolition of the so-called arbitrary shall be effected. Counsel for the respective parties do not agree regarding the present existence of the character of this so-called arbitrary, nor upon the provisions of the final decree by which it should be abolished, and they ask a full hearing upon these questions before they are decided and before the terms of the contract and final decree are settled. Counsel for the United States in their last brief state that the government submits it "with the understanding that the final decree is not now under consideration" and "requests that it be given an opportunity to be heard upon the question of what the final decree shall contain."

We are of the opinion that this request should be granted, that, after a proposed contract and final decree are submitted to this court, pursuant to the interlocutory decree and before the crucial issues now pending are decided, and before we form or express our final opinion concerning them, counsel for the parties should be heard upon them after they know that the hearing is not preliminary, but final. Hence we decline to enter upon a discussion or decision of the merits of the main issues now remaining in this case and, except as stated above, and in the interlocutory decree, we decline either to adopt or to repudiate the views attributed to us by our learned associate, Judge Hook. Indeed, we endeavor, and shall endeavor until after the final hearing upon the terms of the contract and of the final decree, to keep our minds open and to avoid the formation or expression of our opinion upon these issues because this case is here now on a mere motion to enter the preliminary decree directed by the Supreme Court to the effect

15 that "the parties submit to the Court within ninety days after receipt of the mandate, a plan of reorganization of the contract between the fourteen defendant railroad companies and the Terminal Association," which is required to contain the six provisions specified in the interlocutory decree filed herewith, and that decree in our judgment completely effectuates the direction of that Court regarding this preliminary decree. It will be early enough to consider and determine the terms and provisions of the proposed contract and of the final decree when they have been presented for our consideration and after final hearing of the parties have been submitted to us for decision.

16 In the District Court of the United States for the Eastern District of Missouri.

THE UNITED STATES OF AMERICA, Complainant,
v.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants.

HOOK, *Circuit Judge:*

A difference has arisen between my brothers and myself over the meaning of the opinion and mandate of the Supreme Court in this case. It comes in this way: On February 25, 1913, the Government filed and presented to us two motions. The first to vacate an order of September 3, 1912, declining, by an equal division of the Circuit Judges, to take further cognizance of the case, the Supreme Court having subsequently held that the jurisdiction of those judges still continued and should be exercised. The other was entitled "Motion for filing of mandate and entry of interlocutory decree." This is the motion which presents the matters now before us. The Government tendered with the motion a form of interlocutory decree, which it asked us to adopt and enter, enjoining the defendants from continuing to impose certain special charges as being wrongful and contrary to the decision of the Supreme Court (224 U. S. 383). At the hearing of the motion defendants insisted that a form previously approved by the District Judge (without jurisdiction, 226 U. S. 420) was the
17 proper one. It contained no injunction, left the defendants free to continue their practice, and remitted the matter in general terms to a subsequent modification of the contracts between the defendants. The Government earnestly objected to that form of interlocutory decree as insufficient to give the relief the Supreme Court intended it should have. There was an exhaustive discussion in open court involving the interlocutory decree proposed by the Government, the meaning of the opinion of the Supreme Court, whether what defendants were still doing was contrary to that opinion and if so should be enjoined by the interlocutory decree, or on the other hand should be merely abolished by subsequent contract between the defendants. At the conclusion of the arguments we made an order of which the following is the pertinent part, the italics being mine:

"And the said complainant further files and presents to the court a motion to vacate the order entered herein on September 3rd, 1912, together with a motion for the filing of the mandate of the Supreme Court *and for the entry of the interlocutory decree in the form now tendered;* whereupon the court after hearing the arguments of counsel for the respective parties doth order that the said defendants be and they are hereby allowed five days from this date *to file any objections and brief in opposition to the said form of interlocutory decree,* and that the said complainant be and it is hereby allowed five days therafter for reply thereunto; whereupon, *the said motions shall be taken as submitted to the court.*"

The briefs furnished under this order also contain a full discussion, particularly as to whether the continued practice
18 of defendants had been condemned by the Supreme Court and should be enjoined. As will be shown presently, counsel for defendants openly and candidly stated in their brief what they were still doing, but contended it was consistent with the opinion of the Supreme Court. The Government contended in its brief that the practice was condemned by the opinion and that the interlocutory decree it proposed was drawn on that theory. I do not think I am mistaken in saying that my brothers sustain defendants in their contention. Their view is not fully expressed, but it is foreshadowed in the interlocutory decree about to be entered. That decree is substantially in the form of one entered by the District Judge which we vacated. It contains no injunction or award of the relief against the continued imposition of the special rates and charges sought by the Government in its proposed form of interlocutory decree.

I therefore deem it proper and timely to put upon the record what I think the Supreme Court said and intended and a recital of what the defendants are still doing. It is not premature. It is in response to the motion of the Government submitted to us after full argument. I know of no request that our decision be delayed for further argument at final decree. Certainly nothing of the kind appears in the briefs on file. This matter should not be confused with the plan hereafter to be submitted to us for reorganizing the combination of the defendants and reforming the contracts among themselves. That is for the final decree and there is little disagreement and no difficulty about it. When counsel for the Government, by way of precaution, said in their brief that the final decree was not under consideration and that they wished an opportunity to be heard upon its contents, they were addressing themselves to a statement of opposing counsel that the Dis-
19 trict Judge intended to enter a final decree which would be "merely in effect a recital of the order of the Supreme Court." They were not asking that our decision upon their motion and the injunctive provisions of the interlocutory decree so fully presented and argued, be postponed for a further argument. They cannot reasonably be put in that position. The question of injunction is up for decision now. The combination known as the Terminal Association is still acting as a terminal agency. The Supreme Court holds that while doing so certain special or arbitrary charges cannot lawfully be made. If what defendants admit is still being done is wrong, it is wrong now; and the Government is entitled to an injunction at this time and to know definitely just what is enjoined. An injunction is a very proper function of an interlocutory decree when, as here, the facts are admitted and the law has been finally and authoritatively settled by the court of last resort. Nor does it make against this that the injunction may also be carried into a final decree subsequently to be entered. So I say again a decision having been invoked is both timely and proper. If I have misapprehended the position of my brothers

what I shall say will at least serve the parties as a guide, in preparing the final decree, in respect of those things already presented, argued and submitted but passed by. I will not discuss or prejudge any disputed question about the "plan of reorganization" to be submitted and determined at final decree. Reference thereto will be made only so far as there is no controversy and to illustrate those matters which I think should be settled now. Within the above limits, the following conclusions from the opinion of the Supreme Court seem clear:

20 1. The Terminal Railroad Association of St. Louis is a combination prohibited by the Sherman Anti-trust Act if its constituents (the various bridges and terminal companies) are to be regarded as transportation companies or are operated as such.

2. The Association may be upheld, however, as a lawful unification of terminal facilities (as distinguished from ordinary transportation railroads) upon (*a*) certain modifications of the articles of agreement with the proprietary railroad companies, and (*b*) stopping certain administrative practices. These conclusions of the Supreme Court were due in substantial measure to the exceptional topographical situation at St. Louis and vicinity and they would not necessarily apply elsewhere. Cases elsewhere are not necessarily precedents here.

3. The articles of agreement are to be so modified that any existing or future railroad may be admitted to joint ownership or control of the combined terminal properties upon just and reasonable terms securing equality in benefits and burdens with the present proprietary companies; to allow the use of the facilities upon just and reasonable terms and regulations by any railroad not desiring to become a joint owner; and to eliminate from the agreement any provision restricting the proprietary companies to the use of those facilities. And provision is to be made for the submission to this court of certain controversies growing out of the foregoing. Compliance with the above requires merely the contractual action of the defendants.

4. The opinion of the Supreme Court also requires "an inhibition of certain methods of administration." Obviously, in this
21 as in all cases of like character, the inhibition of wrongful practices should be by injunctive decree and not left to rest solely upon stipulations in a contract. The wrongful practices of defendants pointed out by the Supreme Court were directed against the public, not parties to the contract, and it would be quite anomalous if upon a showing in the future that defendants were persisting in them the court should be without punitive power, but could merely declare a breach of contract. As to these I think the opinion of the Supreme Court means that an injunction should be awarded. As the facts are admitted and the law settled the injunction when asked should be granted and not postponed to final decree.

5. The practices referred to are described in the fourth and fifth paragraphs of the directions for a decree set forth in the opinion as follows:

Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis, or other junction points, and then rebilling traffic destined to St. Louis, or to points beyond.

Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

The principal difference between my brothers and myself, as well as between counsel, is over the meaning of the last of these paragraphs. I think that when read, as it should be, in the light of the entire opinion and the record in the case the meaning is quite clear. But whoever is right I take it as highly de-
22 sirable that the prohibition be expressed in the decree with such detail gathered from the opinion and record that no doubt can reasonably be entertained of its scope and purport. This is especially important in a case of injunction, a violation of which may be followed by punishment; or if it be not done, then that the decree be accompanied by an opinion indicating definitely the attitude of this court, to the end that the parties may conduct themselves accordingly. To put the precise words of the fifth paragraph in the decree without more, as is proposed, does not end the case, but establishes a starting point for further controversy and litigation.

7. In considering the fifth paragraph it should be borne in mind that the Supreme Court holds that the Terminal Association can lawfully operate only as a terminal agency of the various carrying railroads. As such it may make the usual charges for terminal services like switching and warehousing, but it cannot lawfully interpose itself as a transportation company between western roads in St. Louis, Missouri, and the eastern roads in East St. Louis, Illinois, and make charges for services of that character. It logically results from this that the two cities (and certain towns to which for brevity no further reference need be made) constitute one commercial and manufacturing center connected and served by an aggregation of terminal facilities in which all the railroads are or may be interested and which all may use. As regards transportation rates the several localities of this industrial center should be upon a parity without discrimination, arbitrary or differential; otherwise the Association becomes at once an unlawful combination of carrying railroads. The prohibition in the fourth paragraph of
23 the practice of requiring shippers to rebill at East St. Louis the traffic destined to St. Louis or beyond is in line with this view; also the court's references to the exceptional physical situation in that locality. The testimony before the Supreme Court discloses the conditions to which the fifth paragraph is directed. It shows that no distinction was being made between St. Louis and East St. Louis in respect of rates on traffic originating or destined outside of an irregular area about those cities having a radius of approximately one hundred miles. In respect of those rates the cities were one. Mr. Perkins, the witness referred to in the opinion,

said by way of example: "A shipment coming from say Kansas City to St. Louis has the same rate as a shipment coming from Kansas City to East St. Louis." He also said the two cities were on a parity as regards rates on west-bound shipments from points outside the area referred to. But the situation was entirely different as to rates on traffic originating and ending within the limited area. Concerning these Mr. Perkins testified as follows:

"But the basis of rates between St. Louis and points within the one hundred mile radius east of here, is higher than between East St. Louis and those points, taken by itself. The basis of rates between East St. Louis and the points within one hundred miles west of here is higher than the basis of rates between St. Louis and points west of here."

The report of the Municipal Bridge and Terminal Commission to the Municipal Assembly of St. Louis on February 11, 1908, contains this paragraph:

"In the report of May 24, 1907, reference was made to an
24 arrangement perfected at a meeting between the executive traffic officers of Eastern Lines and your Commission, on April 19, 1907, for the removal of the last of the bridge arbitrary differentials on business between St. Louis and points beyond a 100 mile radius. That arrangement has now been carried out."

In view of some contentions of defendants' counsel which will be presently mentioned three things about the above excerpt may be noted: First, the charge in question is referred to as "bridge arbitrary differential;" second, the charge was removed from business outside the 100 mile radius; and third, the removal was effected by arrangement with "Eastern Lines," not with the Terminal Association. Counsel assert the right of defendants to continue within the 100 mile area the additional charge as between the two cities which was removed outside, and in this as I understand it, they are upheld by my brothers. Counsel for defendants say in their brief:

"We understand it to be true that the railroad companies, parties to the case, make a higher charge for St. Louis than East St. Louis on some traffic originating within the so-called one hundred mile area. There is a zone beyond the one hundred mile area, in which the entire charge for the use of terminal facilities of the Terminal Association is absorbed in the through railroad rates, making the East St. Louis rate applicable to industries on the Terminal Association and railroads in St. Louis."

25 They contend this was not what the Supreme Court had in mind, but since the record shows no other existing condition to which the fifth paragraph could apply they are driven to the suggestion that the Supreme Court labored under a misapprehension because the charge now made is not an arbitrary and is not imposed by the Terminal Association but by the railroads. It is not important what this charge for transportation across the river between St. Louis and East St. Louis may be called. In the testimony it was referred to interchangeably as an arbitrary, a differential and a special charge. The Supreme Court referred to it

as "a special or so-called arbitrary charge." Mr. Perkins said: "It makes no difference whether you call it arbitrary or differential, or what, it is an amount paid." And as we have seen the Terminal's Commission referred to like charges on traffic coming from or destined outside the area as "bridge arbitrary differentials." It is equally unimportant that instead of being imposed by the Terminal Association as was once the case it is now being added by the proprietary railroads to their freight rates. In either case it is not a terminal switching charge, but is a transportation charge as to which the two cities are not upon a parity. The combination of terminal facilities at St. Louis cannot lawfully operate or be operated as carrying railroads. The record before the Supreme Court showed clearly that when the testimony was taken the special charge was not being made as a separate, distinct item, but was added to and included in the freight rate within the 100 mile area. Mr. Perkins testified that it was still there. I think the Supreme Court was dealing with the situation so disclosed and with substance, not form. Whether imposed by the Terminal Association as an agency or by the proprietary railroads as principals the arbitrary was equaly objectionable as a transportation charge and worked a burden on the commerce of St. Louis. I repeat here the
26 direction of the Supreme Court: "the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of the traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area." In applying this, effect must be given to the phrase "equally and in like manner."

By the opinion and mandate the Supreme Court defined the permissible character of the Terminal Association as a combination of terminal facilities reaching and serving a common commercial and manufacturing center; directed changes in its organization to adapt it to local conditions; conceded the right to charge and collect for proper terminal services; denied the right in it or its proprietors to charge and collect transportation rates for carriage across the river as though the cities were distinct communities; and directed the inhibition of certain practices not in harmony with the above. Having so fixed the status of the parties the Interstate Commerce Commission was left free for the exercise of its jurisdiction.

Filed June 16th, 1913. W. W. Nall, Clerk.

27 (*Final Decree and Opinion of Circuit Judge Smith.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants.

This cause came on to be heard at this term, and it appearing that the United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on June 6, 1910; and the Supreme Court of the United States at its October Term, 1911, having duly heard said appeal upon the Transcript of the Record, and having thereupon on the 22nd day of April, 1912, ordered, adjudged and decreed that the said decree of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri in this cause be and the same is hereby reversed, and that said cause is remanded to this Court for further proceedings in accordance with the mandate of the Supreme Court of the United States in this cause, bear-
28 ing date the twenty-third day of May, 1912.

And afterwards, to-wit, it appearing that on the 16th day of June, 1913, a preliminary decree was entered in accordance with the mandate of the Supreme Court, now, therefore, it is ordered, adjudged and decreed by the Court as follows:

1. The Terminal Railroad Association of St. Louis is an unlawful combination contrary to the Anti-Trust Act of July 2, 1890 (26 Stat. 209), when it and the various bridge and terminal companies composing it are operated as railroad transportation companies. The combination may, however, exist and continue as a lawful unification of terminal facilities upon abandoning all operating methods and charges as and for railroad transportation and confining itself to the transaction of a terminal business such as supplying and operating facilities for the interchange of traffic between railroads and to assist in the collecting and distributing of traffic for the carrier companies, switching, storage and the like, and modifying its contracts as herein specified.

An election having been made to continue the combination for terminal purposes the defendants are therefore perpetually enjoined from in any wise managing or conducting the said Terminal Railroad Association or any of its constituent companies and from operating any of the properties belonging to it or its constituents otherwise than as terminal facilities for the railroad companies using the same, and from making charges otherwise than for and according to the nature of the services so lawfully authorized to be rendered.

2. The Agreement of October 1, 1889, between the Terminal Railroad Association and various other defendants, known in the record as Exhibit "A", shall be reformed in the following manner:

(*a*) The provision thereof reading as follows shall be eliminated: "III. In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."

(*b*) The provision thereof reading as follows shall be eliminated: "XVII. Neither party shall sell, assign, transfer or underlet the rights and privileges hereby granted, or any of them, to any other company or companies without the unanimous consent of the Board of Directors of the first party."

In lieu thereof the following may be inserted: "No proprietary or using company shall sublet its rights and privileges in the use of the terminal facilities to any other company or companies."

(*c*) The provision thereof reading as follows shall be eliminated: "XIX. This agreement may be executed in counterparts, and any railroad company not named as second party hereto, may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such a consideration as they may determine, and on signing this agreement or any counterpart thereof thereby indicating its rights and duties in respect to use of said terminal system to be the same and none other than the said proprietary companies named as second party hereto."

In lieu thereof the following shall be inserted:

(1) In case any other railroad company, not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal properties of said Association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.

(2) Any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis may enjoy the use thereof upon such just and reasonable terms and regulations, as will in respect of use, character and cost of service, place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

(3) Any dispute or controversy which shall hereafter arise between any railroad company applying for joint ownership or use of the said terminal properties and the owning, proprietary com-

panies shall be submitted to the United States District Court for the Eastern Division of the Eastern District of Missouri by filing a petition in this cause setting out specifically the facts upon which the said parties have disagreed and the party so filing said
31 petition shall at least fifteen (15) days before so doing so serve the other party to the controversy with a copy of the petition proposed to be filed, together with a notice that said petition will be filed on a certain designated day. Thereupon the matter shall be placed upon the docket of the United States District Court for the Eastern Division of the Eastern District of Missouri, and shall be heard when called in its regular order on said docket and the proceedings shall be subject to review by appeal as in any other cases. Upon being advised by the filing of a petition of such dispute or controversy the Court may at once admit the applying company to ownership or use of the terminal facilities during the pendency of the proceeding upon the giving of security in amount and form as it may direct.

(*d*) All provisions of the purport or effect of those eliminated from the Agreement of October 1, 1889, shall also be removed from all other contracts affecting the ownership or use of the terminal facilities to which the Terminal Railroad Association and the proprietary companies or any of them are parties. The benefits and burdens of the amended agreement shall inure to and rest upon all future proprietary and using railroad companies respectively.

3. Hereafter traffic destined to St. Louis, Missouri, or to points west of the Mississippi River and to be transported through the St. Louis gateway or traffic from St. Louis, Missouri, destined to points east of said river, shall not be billed to East St. Louis, Illinois, or other junction points or termini of the railroads of any of the said railroad companies east of the river and then rebilled to destination, but for all such traffic each railroad company shall issue through bills of lading unless otherwise directed by the person controlling the same. The defendants are perpetually enjoined from violating the above provisions.

32 4. The defendants are perpetually enjoined from making any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

5. The provisions of this decree shall extend to and embrace all railroad companies now or hereafter admitted to joint ownership or use of the facilities of the Terminal Railroad Association and to all its facilities present and future acquired.

6. Nothing in this decree shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Railroad Association, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred by law upon such commission.

7. This cause is reserved for such further orders and decrees as may be deemed necessary.

WALTER H. SANBORN,
WILLIAM C. HOOK,
WALTER I. SMITH,
Circuit Judges.

St. Louis, January 29, 1914.

Filed March 2, 1914. W. W. Nall, Clerk.

33 In the District Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants.

SMITH, *Circuit Judge:*

The members of the Court have entertained and now entertain divergent views as to what the decree in this case should be notwithstanding the opinion of the Supreme Court, which is our guide and which all of us are cheerfully desirous of following according to its true intent.

The foregoing decree is in the nature of a compromise of these divergent views and as such I have signed it, but I could not do this without expressing my personal opinion briefly upon the subject.

The fixing of rates for the future is a legislative and not a judicial function.

There are numerous roads which do not extend beyond the State of Illinois which terminate at East St. Louis. One of these
34 is only eight or ten miles long. It probably cost not to exceed three hundred thousand dollars for the entire road. It is now contended that the Supreme Court meant to hold that for whatever price this road saw fit to haul coal to East St. Louis or for whatever price might be fixed by Illinois it must haul it to St. Louis over property including bridges, right-of-way and trackage worth many millions of dollars.

I cannot reach that conclusion and chiefly because such a decree would be beyond the jurisdiction of this or any other human court even as a part of the jurisdiction of a court of equity to award complete relief. It is distinctly a legislative function and until Congress or the Interstate Commerce Commission shall so fix the rates no judicial tribunal has any power to so decree.

2. Not only has the Interstate Commerce Commission not so decreed, but it has long held that such an order should not be made.

Commercial Club of Omaha v. C. R. I. & P. Ry. Co., 6 Interstate Commerce Commission Rep., 647;

See other cases cited in Pierce's Digest of Decisions under Act to Regulate Commerce, 405-6-7.

3. Wholly aside from both of these questions if this decree means the rate must be the same from points in Illinois to East St. Louis, Illinois, and to St. Louis, Missouri, then an intrastate and an interstate rate are indissolubly united and the State of Illinois has thus power to fix interstate rates.

It has recently been held that before State rates can be
35 declared unconstitutional the entire intrastate business must be taken into account.

For this reason the State of Illinois could put in a non-compensatory coal rate to East St. Louis if the rates as a whole were compensatory.

There is substantially no limit the State cannot go to in reducing the rates on any given commodity provided the entire body of rates is compensatory.

It was held in the Minnesota Rate Cases, 230 U. S. 352, that the Interstate Commerce law did not divest the State of the power to make rates throughout its limits and so under no provision of the existing law, State or Federal, could the rate on coal from points in Illinois to East St. Louis be decreed invalid unless the entire schedule of rates was non-compensatory.

It is apparently the opinion of at least a part of the Court that this decree without legislative action ties interstate rates onto State rates so that while the United States under existing laws cannot control State rates a State may control United States rates.

This is abhorrent to me and I do not think is the true construction.

Assuming without admitting that a terminal company cannot establish different switching rates for different zones I submit that the various railroads independently of what they pay for switching may establish one rate to East St. Louis and another to St. Louis and in the absence of some action by Congress or the Interstate Commerce Commission there is no power to interfere with their doing so under this decree or otherwise.

Except Congress or the Interstate Commerce Commission act there is no one authorized to so order.

Assuming again that the Terminal Company cannot es-
36 tablish different switching rates for different zones, I am satisfied that irrespective of what switching rates they have to pay the railroads have the right to charge a higher rate into St. Louis on Illinois coal than they do to East St. Louis on the same coal.

Filed March 2, 1914. W. W. Nall, Clerk.

37 (*Motion of Defendants to Modify Final Decree.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, Complainant,
v.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants.

Come now the defendants in the above entitled cause and move the Court to modify Article 1 of the Final Decree herein entered, which is as follows:

"1. The Terminal Railroad Association of St. Louis is an unlawful combination contrary to the Anti-Trust Act of July 2, 1890 (26 Stat. 209), when it and the various bridge and terminal companies composing it are operated as railroad transportation companies. The combination may, however, exist and continue as a lawful unification of terminal facilities upon abandoning all operating methods and charges as and for railroad transportation, and confining itself to the transaction of a terminal business such as supplying and operating facilities for the interchange of traffic between railroads and to assist in the collecting and distributing of traffic for the carrier companies, switching, storage and the like, and modifying its contracts as herein specified.

"An election having been made to continue the combination for terminal purposes, the defendants are therefore, perpetually enjoined from in any wise managing or conducting the said Terminal Railroad Association or any of its constituent companies, and from operating any of the properties belonging to it or its constituents, otherwise than as terminal facilities for railroad companies using the same, and from making charges otherwise than for and according to the nature of the services so lawfully
38 authorized to be rendered."

By striking out all of said paragraph:

First. For that, it appears that the defendants herein have conformed to the special directions contained in the Supreme Court's decree herein and the special directions of the interlocutory order of this Court herein, pursuant to the mandate of the Supreme Court, and, having done so, said Terminal Association has ceased to be an unlawful combination, contrary to the Anti-Trust Act of July 2, 1890, as found by this Court in the first paragraph of said Article 1.

Second. Because defendant, Terminal Railroad Association of St. Louis, is enjoined from making charges otherwise than for supplying and operating facilities for the interchange of traffic between railroads, and to assist in the collecting and distributing of traffic for the carrier companies, switching, storage and the like, and is required to abandon all operating methods and charges as and for railroad transportation;

For that, while the general scheme and purpose of the Terminal Association, and its subsidiary companies is that of affording terminal advantages and facilities to railroad companies, yet, as an incident to that business, and on account of the necessary extent of its tracks, covering an area of seventy-five to one hundred square miles, it is frequently called upon to take traffic from one point on its line to another point on its line, completing the entire movement on its own tracks.

As an illustration: The Terminal Association operates in the early morning and late in the afternoon some trains to transport laborers engaged in industrial factories from Granite City, Illinois, to the different stations on its line in St. Louis, Missouri. This it is prohibited from doing under the decree.

Another illustration: Many factories are located upon the Terminal Association's tracks on both sides of the Mississippi River. Under this order the defendant, Terminal Association, would be restrained from accepting either raw material or finished products shipped from one such factory to another, although it could, with great convenience to the public, render such service.

These are incidents, but very important incidents, to the principal business of the Terminal Association, and, we submit, were not in contemplation of the decree ordered by the Supreme Court.

H. S. PRIEST,
T. M. PIERCE,
Attorneys for Defendant.

Endorsed: Filed March 28th 1914, W. W. Nall, Clerk.

39 (*Motion of Evens & Howard Fire Brick Company to Modify and Amend Final Decree.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants; EVENS & HOWARD FIRE BRICK COMPANY, Intervenor.

A. & J. F. Lee, Solicitors for Intervenor.

40 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants; EVENS & HOWARD FIRE BRICK COMPANY, Intervenor.

Now comes Evens & Howard Fire Brick Company and states that it is a corporation organized and existing under the laws of the

State of Missouri, having its chief place of business in the City of St. Louis in said State. That in the year 1908 it built, and has since maintained, and is now operating, a fire brick plant in the County of St. Louis, Missouri, on the line of the above
41 named defendant, at a cost of Five Hundred Thousand Dollars ($500,000) for the manufacture of fire brick and other kindred products; that the output of said factory is in value about Five Hundred Thousand Dollars ($500,000) per annum, and this petitioner states that it employs at its said plant 250 persons and at its mine, hereinafter mentioned, 50 persons; that this petitioner requires for the conduct of its business large quantities of fire clay; that it has secured a tract of land on the line of said defendant five (5) miles distant from its said plant, from which it has a right to obtain, and can obtain, sufficient supplies of fire clay to operate its said plant at its full capacity for twenty (20) years; that it has no other supply of fire clay; that the same cannot be bought in the market, and your petitioner knows of no source at present from which fire clay could be obtained for its work except from said mine, unless at prices which would be so high, or conveyed to said plant by methods other than railroads, which would be so costly as to be prohibitive.

Your petitioner says that it has purchased and is about to put into operation a number of cars in which fire clay is to be loaded at said mine, carried thence over the switch at said mine to the main tracks of said defendant and moved over said tracks by defendant to the said switch at the plant of this petitioner and over said switch to its works, and there unloaded of said clay and the empty cars returned in the same manner to said mine, said cars being in number and capacity sufficient to carry all the fire clay needed to supply said plant when in operation. That heretofore, and before said purchase, the clay used by said petitioner has been moved in cars belonging to railroads other than said Association between
42 the points and in the manner above mentioned, and said cars when emptied were either returned to said mine for reloading with fire clay or sent elsewhere. That, in order to supply said plant with fire clay, it will be necessary that there should be so moved over said line into said plant from said mine not less than two thousand loaded cars per year. That the movement of said cars from said mine to said plant would be wholly over the lines of said defendant and would not be in any way competitive with any other railroad as to rates or otherwise, and that neither said mine nor said plant is reached by any other railroad. That without said supply of clay said plant of this petitioner would be valueless and could not be operated at its present position; that its wreckage value would not exceed Ten Thousand Dollars ($10,000.), being mostly underground conduits, which would be entirely destroyed, and brick work, which would be valueless, if removed.

Your petitioner says that on the 22d day of March, 1914, this Court entered in the above entitled cause a final decree and that Section 1 on Page 2 of said final decree reads as follows:

"The defendants are therefore perpetually enjoined from in any wise managing or conducting the said Terminal Railroad Associa-

tion or any of its constituent companies, and from operating any of the properties belonging to it or its constituents, otherwise than as terminal facilities for the railroad companies using the same."

Said section of said decree further provides that the Terminal Railroad Association may continue as a lawful unification
43 of terminal facilities "upon abandoning all operating methods and charges as and for railroad transportation and confining itself to the transaction of a terminal business such as supplying and operating facilities for the interchange of traffic between railroads."

Petitioner states that giving this language a literal construction the Terminal Association would thereby be enjoined and prohibited from performing the services for your petitioner above stated to be performed, for the reason that giving the language of the decree a literal construction, such handling and moving of said cars from petitioner's mine to its said plant and the return of said cars when empty are not "an interchange of traffic between railroads," and might be held and construed to be "the doing of business as railroad transportation."

Petitioner says that at no time did it have any knowledge or information that any such question was involved in said cause, or that any question of the legality of the movement of its traffic from one point on the Terminal Association tracks to another was involved, and that the first information it received as to the nature and terms of the final decree, as entered in said cause, was obtained from the public press on or about the 1st or 2nd of April, 1914.

Petitioner says that a very grave and irreparable injury would be done to it if, by the terms of the decree entered in this cause, the Terminal Association were precluded and enjoined from continuing to move its clay from said mine to said plant or to move the empty cars of this petitioner from said plant to said mine.

44 Petitioner says that it is informed that the Terminal Railroad Association has filed in the above entitled proceeding a motion to modify Article 1 of the said final decree, and has attached to said motion an exhibit purporting to show the various persons and corporations whose situation in regard to certain service over the Terminal Railroad Association tracks is in many respects like that of your petitioner, and which exhibit purports to show the number of cars moved by the said Terminal Association during the year 1913 for said persons and corporations where the movement required like service to that hereinabove set forth as being done and required for your petitioner.

Your petitioner states that whilst it appears by said exhibit that the cars moved in the year 1913 for your petitioner were only 474 cars, that the rate at which cars now are being moved for your petitioner by said Association in the manner mentioned, is 2,000 cars per year, which rate this petitioner is informed and believes will continue hereafter or be largely increased, if permitted by this Court.

Said exhibit further shows that 521 industries, including this petitioner, are substantially similarly situated on the lines of said Association. The entire service, therefore, performed over the Terminal Association's own lines, for the year 1913 was 30,584 cars.

Petitioner says that none of the business so being moved by the said Association for this petitioner over its own lines was competitive with any railroad constituting one of the proprietary lines in said Association or with any other railroad.

45 Wherefore, the premises considered, petitioner prays that the final decree heretofore entered in said cause may be so altered, amended and changed, as not only to permit the Terminal Railroad Association to continue to perform such services for your petitioner as it is above stated said Association is rendering this petitioner by moving its said cars between the mine of this petitioner and its plant, even though the moving thereof from said initial point to said delivery point be entirely over the lines of said Association, but also prays that said decree may be made so clear and plain that petitioner and others substantially similarly situated as is petitioner may be entitled to demand and require of said Association the moving of cars from one point on the line of said Association to other points on said lines, even though the moving of said cars be entirely over the lines of said Association; and that petitioner and others substantially situated may be placed in a position where such duty on the part of said Association may be enforced by them, should such service be at any time declined or refused by said Association. And petitioner further prays that it may be permitted to appear by counsel and be heard on the proposed amendment or modification of said decree, either jointly with the hearing granted the Terminal Association, or at such other time and place as to the Court may seem meet and proper. And your petitioner prays for such other and further relief as to the Court may seem proper.

EVENS & HOWARD FIRE BRICK COMPANY,
By A. & J. F. LEE, *Solicitors.*

46 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

On this 18th day of April, 1914, before me personally appeared Cecil D. Gregg, who, being first duly sworn, did say: I am the president of the Evens & Howard Fire Brick Company, a corporation, and, as such, have personal knowledge of the matters and facts stated and set forth in the foregoing motion; and affiant says that the matters and facts stated and set forth in the foregoing motion are true.

(Signed) CECIL D. GREGG.

Subscribed and sworn to by Cecil D. Gregg before me, this 18th day of April, 1914.

(Signed) JAMES A. WAECHTER,
[SEAL.] *Notary Public.*

My commission expires Jan. 5, 1916.

Endorsed: Filed June 20, 1914. W. W. Nall, Clerk.

47 *(Motion of Union Sand & Material Company to Modify and Amend Final Decree.)*

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants.

Motion of the Union Sand and Material Company to Modify and Amend Final Decree and for Leave to be Heard on said Motion.

George M. Block, Solicitor for Union Sand & Material Company.

48 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants.

Comes now the Union Sand & Material Company and shows to the Court that it is a corporation organized and existing under the laws of the State of Missouri, and engaged, among other things, in digging and dredging sand out of the Mississippi River, and is the largest producer and dealer in building materials in the City of St. Louis; that it has an elevator plant at the foot of Tyler street, in said city, on the banks of the Mississippi River, at which point sand is elevated from barges into an elevator and loaded into cars
49 and thence shipped in cars to all points in the City of St. Louis; that this plant represents an investment of over Sixty Thousand Dollars ($60,000.00), and that it owns and operates 200 cars in connection with the operation of said plant. Petitioner says that it has, and maintains, a yard in the northwestern part of the city, for supplying sand to the northwestern part of the City of St. Louis, which plant is located on the Natural Bridge Road on the tracks of the Terminal Railroad Association, and which plant represents an investment of more than Twenty-five Thousand Dollars ($25,000.00). Petitioner also keeps and maintains a plant at Bremen Avenue, in the City of St. Louis, on the tracks of the Terminal Railroad Association, from which it supplies sand to the northern part of the City of St. Louis. This plant also represents a large investment.

Petitioner says that the elevating plant at Tyler Street, and the yard at Bremen Avenue are located on what was originally the Wiggins Ferry Company tracks and were so located when the Wiggins Ferry Company was an independent company and in no wise connected with the Terminal Railroad Association.

Petitioner says that during the year 1913 it shipped from the Tyler Street yards to the Natural Bridge Road yards, to the Bremen Avenue yards and to various industrial concerns located on the tracks of the Terminal Railroad Association, all in the City of St. Louis, 3,379 cars of sand. Petitioner says that all of said shipments so made by it during the year 1913 from the Tyler Street Elevator plant to the Natural Bridge Road yard, to the Bremen Avenue yard, and to said industrial plants, and amounting to 3,379 loaded cars, were shipments over the Terminal Railroad Association
50 of St. Louis, which were moved from the initial point, to-wit, the Tyler Street Elevator plant to the point of delivery, entirely over the rails and lines of the Terminal Railroad Association of St. Louis, each of said cars being as a matter of fact a movement from one point on the line of the Terminal Railroad to another point on the line of the Terminal Railroad, the entire movement from the initial point to the delivery point being on the tracks of the Terminal Railroad Association.

Petitioner says that there is no other available location to which it could remove its elevator plant which is now located at the foot of Tyler Street.

Petitioner says that on the 2nd day of March, 1914, in the above-entitled cause, this Court entered a final decree and that Section 1 on Page 2 of the said final decree reads as follows:

"The defendants are therefore perpetually enjoined from in any wise managing or conducting the said Terminal Railroad Association or any of its constituent companies, and from operating any of the properties belonging to it or its constituents, otherwise than as terminal facilities for the railroad companies using the same."

Said section of said decree further provides that the Terminal Railroad Association may continue as a lawful unification of terminal facilities "upon abandoning all operating methods and charges as and for railroad transportation and confining itself to the transaction of a terminal business such as supplying and operating facilities for the interchange of traffic between railroads." Peti-
51 tioner says that giving this language a literal construction the Terminal Association would thereby be enjoined and prohibited from performing the services for your petitioner above set forth, to-wit, from moving the products of its Tyler Street Elevator plant to the Natural Bridge Road plant, the Bremen Avenue plant, and the industrial plants located on the lines of the Terminal Railroad Association, for the reason that giving the language of the decree a literal construction such handling and moving of said cars from petitioner's Tyler Street plant is not "an interchange of traffic between railroads" and might be held and construed to be "the doing of business as railroad transportation."

Petitioner says that at no time did it have any knowledge or information that any such question was involved in this proceeding, or that any question of the legality of the movement of its traffic from one point on the Terminal Association tracks to another was involved, and that the first information it received as to the nature and terms of the final decree, as entered in said cause, was obtained from the public press which called attention to the same on or about the 1st or 2nd of April, 1914.

Petitioner says that a very grave and irreparable injury would be done to it if, by the terms of the decree entered in this cause, the Terminal Railroad Association were precluded and enjoined from continuing to move the products of its plant at Tyler Street to other points on the system of the Terminal Railroad Association, and especially to the points mentioned herein, to-wit, Bremen
52 Avenue, Natural Bridge Road yard, and industrial plants at other points on the system of the Terminal Association.

Petitioner says that it is informed that the Terminal Railroad Association has filed in the above-entitled proceeding a motion to modify Article 1 of the said final decree, and has attached to said motion an exhibit showing the various persons and corporations whose situation in regard to certain service over the Terminal Railroad Association is like unto that of your petitioner, and which exhibit shows the number of cars moved by the Terminal Association during the year 1913 for said various persons and corporations where the movement required like service to that hereinabove set forth as being done and required for your petitioner.

This exhibit shows that 521 industries, including this petitioner, are similarly situated on the lines of the Terminal Railroad Association, and that the total number of cars moved by the Terminal Railroad Association for these various industries from one point on its line to another point on its line, the entire service therefor being performed over the Terminal's own lines, for the year 1913 was 30,584 cars of which there were moved for petitioner 3379 loaded cars from the Tyler Street plant to the Natural Bridge Road yard, the Bremen Avenue yard, and to various industrial concerns located on the tracks of the Terminal Railroad Association in the City of St. Louis, in addition to which there were moved for your petitioner 805 loaded cars during the year 1913 by said Terminal Railroad Association from one point on the said Terminal line to other
53 points on the said Terminal line in East St. Louis, and making the entire number of loaded cars so moved for petitioner by the Terminal Railroad Association for the year 1913 4184 cars, and being about 14% of the total cars moved by the Terminal Railroad Association for the year 1913 for all parties similarly situated as was your petitioner; and petitioner says that none of said business embraced in the movement of said 4184 cars, so moved for it by the Terminal Railroad Association, was competitive with any railroad constituting one of the proprietary lines in said Terminal Railroad Association, or with any other railroad.

Wherefore, the premises considered, petitioner prays that the final decree heretofore entered in said cause may be so altered, amended or changed as not only to permit the Terminal Railroad Association to continue performing such services for your petitioner, by moving its said cars from one point on the lines of the Terminal Railroad Association to other points on the lines of the Terminal Railroad Association, even though the moving thereof from said initial point to said delivery point be entirely over the lines of the Terminal Railroad Association, but also petitioner prays that said decree may be made so clear and plain that petitioner and others similarly situated as is petitioner may be entitled to demand and require of the

Terminal Railroad Association the moving of cars from one point on the line of said Terminal Railroad Association to other points on the lines of said Terminal Railroad Association within what is known as the switching limits of St. Louis and East St. Louis, even though the moving of said cars be entirely over the lines of
54 the Terminal Railroad Association; and that petitioner and others similarly situated may be placed in a position where such duty on the part of the Terminal Railroad Association may be enforced by them, should such service be at any time declined or refused by said Association. And petitioner further prays that it may be permitted to appear by counsel and be heard on the proposed amendment or modification of said decree, either jointly with the hearing granted the Terminal Railroad Association, or at such other time and place as to the Court shall seem meet and proper.

UNION SAND & MATERIAL COMPANY,
By GEO. M. BLOCK, *Solicitor.*

UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

On this 10th day of April, 1914, before me personally appeared H. L. Block, who, being first duly sworn, did say: I am President of the Union Sand & Material Company, and, as such, have personal knowledge of the matters and facts stated and set forth in the foregoing motion; and affiant says that the matters and facts stated and set forth in the foregoing motion are true.

H. L. BLOCK.

Subscribed and sworn to by H. L. Block before me this 10th day of April, 1914.

[SEAL.] EDITH FOSTER,
Notary Public.

My commission expires October 13, 1916.

Endorsed: Filed June 20, 1914. W. W. Nall, Clerk.

55 (*Supplemental Petitions of 53 Other Parties to Amend Final Decree.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants; Evens & Howard Fire Brick Co., Union Sand & Material Co., and Fifty-three Other Petitioners.

George M. Block and A. & J. F. Lee, Solicitors for Petitioners.

56 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants; Evens & Howard Fire Brick Co., Union Sand & Material Co., and Fifty-three Other Petitioners.

Now come Hoyt Metal Co., and St. Louis Brewing Association, Heine Safety Boiler Co., Goffee & Carkener Co., Picker & Bearsdley Com. Co., Exchange Elevator, Terminal Elevator, Advance Elevator, Albers Com. Co., Barry Wehmiller Machinery Co., S. H. Bickley, Mound City Elevator, Langenberg Bros. Co., Tabeman Mackey Co., St. Louis Elevator & Grain Co., Laclede Steel Co., All Roofing Mfg. Co., East St. Louis Stone Co., Geo. S. Mepham & Co., Missouri Mallable Iron Co., Kettle River Co., Morris & Co., St. Louis Bed Mfg. Co., General Chemical Co., Commercial Acid Co., Elliot Frog & Switch Co., Indiahoma Refining Co., Commonwealth Steel Co., Frederick E. Rausch, M. W. Warren Coke Co., Interstate Scrap Iron Co., M. Cohen, Boecheler Lumber Co., Cohen-Schwartz Rail & Steel Co., L. J. Cohen & Co., National Enameling & Stamping Co., Granite City Steel Works, Christopher & Simpson Steel Works Co., G. Mathes Iron & Metal Co., Curtis & Co. Mfg. Co., Fayette R. Plumb (Inc.) Wrought Iron Range Co., E. E. Souther Iron Co., St. Louis Frog & Switch Co., Green's Car Wheel Mfg. Co., Jos. Greenspon's Sons Iron & Steel Co., Laclede Gas Light Co., Big Ben Quarry Co., Fruin-Colnon Contracting Co., Ralston Purina Co., Polar Wave Ice & Fuel Co., Granite Gas & Fuel Co., and Jos. Joseph & Bros. Co., and
57 state that they are corporations each organized and existing under the laws of one of the United States; that the Terminal Railroad Association of St. Louis is now engaged in moving loaded cars from one point on its line over its own rails exclusively, to another point on its line, carrying freight needed for the operation of their respective plants situated on said line at the date and to the number set after their respective signatures below under the words "No. of cars"; and that the movement of such loaded cars is necessary for the continuance of the business of these petitioners; that these petitioners hereby make, as their own, the statement of fact contained in the petitions of the Union Sand & Material Company and Evens & Howard Fire Brick Company, except in so far as the statements therein have peculiar reference to said two Companies.

These petitioners hereby offer to verify, by the affidavits of their respective officers, this petition if the Court shall desire that such verification be made.

These petitioners pray for the relief prayed for in such petitions of said Union Sand & Material Company and said Evens & Howard Fire Brick Company, and for such other and further relief as the Court may deem proper.

	Name of Petitioner.	No. of Cars.
	Hoyt Metal Co. by B. S. Thompson, Vice-Pres't	199
	St. Louis Brewing Ass'n, Henry Nicolaus, Pres't	141
	Heine Safety Boiler Co., by C. R. D. Meier	62
	Goffe & Carkener Co., G. C. Martin, Jr., Manager	88
	Picker & Brardsley Com. Co., per E. Picker	62
	Exchange Elevator	173
	Terminal Elevator	15
	Advance Elevator	7
	Albert Com. Co	37
	C. H. Alerbert Com. Co., Edw. M. Flesh, Pres't	——
58	Barry-Wehmiller Machinery Co., F. Latal, Sec'y	20
	S. H. Bickley	134
	Mound City Elevator, F. N. Young, Pres't	99
	Langenberg Bros. Co	61
	Taberman Mackey & Co	338
	St. Louis Elevator & Grain Co., Jacob Schreiner, Pres't	47
	Laclede Steel Co., Thomas R. Akin, Pres	407
	All Roofing Mfg. Co	6
	East St. Louis Stone Co., R. E. McLean, Mgr	572
	Geo. S. Mepham & Co	10
	Missouri Malleable Iron Co., F. E. Nulsen, Pres. & G. M	8
	Kettle River Co., per G. A. McLin	104
	Morris & Company, per C. Breinemann, A. T. M	24
	St. Louis Bed & Mfg. Co., Paul Schwaig	17
	General Chemical Co., M. A. Bruan, Supt	1
	Commercial Acid Co., A. E. Hopson, Supt	213
	Elliot Frog & Switch Co	61
	Commonwealth Steel Co., by Geo. K. Hoblitzelle, V. P	801
	Indiahoma Refining Co., By C. D. Martin, Pres	109
	Frederick E. Rausch	258
	M. W. Warren Coke Co., By P. H. Woods, Vice Pres	41
	Interstate Scrap Iron Co., by M. Cohen, Pres	145
	M. Cohen	51
	Boeckeler Lumber Co., by Henry A. Boeckeler, Pres't	77
	Cohen Schwartz Rail & Steel Co	563
	L. J. Cohen & Co	11
	National Enameling & Stamping Co., by Thos. K. Niedringhaus, Vice Pres	1,699
	Granite City Steel W'ks	1,351
	Christopher & Simpson Iron Works Co	52
	G. Mathes Iron & Metal Co., Jos. Mathes, Pres't	136
59	Curtis & Co. Mfg. Co., J. H. Steedman, V. Pres't	158
	Fayette R. Plumb, Inc., C. P. Bascom, Mgr	50
	Wrought Iron Range Co., B. B. Culver, Pres't	74
	E. E. Souther Iron Co., W. M. Scudder, V. Pres't	83
	St. Louis Frog & Switch Co., R. E. Einstein, Sec'y	77
	Green's Car Wheel Mfg. Co., Geo. F. Cottrill, Sec'y	30
	Jos. Greenspons Son Iron & Steel Co., per Louis Greenspons, Pres.	127
	The Laclede Gas Light Company, C. L. Holman, Pres	342

Big Bend Quarry Co., By M. Skuinka, Sec'y & Treas.....	346
Fruin Colnon Contracting Co., By B. S. Colnon, Pres't.....	40
Ralston Purina Co., Wm. H. Danforth, Pres't.....	53
Polar Wave Ice & Fuel Co., By C. W. Whitelaw, Pres't.....	523
Granite City Gas & Fuel Co., Thos. L. Niedringhaus, Pres't..	226
The Jos. Joseph & Bros. Co.....	14

Endorsed: Filed June 20th, 1914. W. W. Nall, Clerk.

60 *(Order Denying Petitions of Evans & Howard Fire Brick Co. and Others for Leave to Intervene in the Cause.)*

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

UNITED STATES OF AMERICA, Complainant,
vs.
THE ST. LOUIS TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants.

Now come the Evens & Howard Fire Brick Company, the Union Sand & Material Company, and the fifty-three other parties whose supplemental petitions hereto attached are presented to the Court & which petitions were filed with the Court on April 12, 1914, and they ask leave to file said petitions in this court, to which the counsel of the United States in open court objects and thereupon leave is granted by the court to said petitioners to file their said petitions and supplemental petitions, this 20th day of June 1914. Which is accordin-ly done. But the prayers of the petitioners for leave to intervene are hereby denied. The petitioners excepted to this denial. Request for stay denied to which petitioners also excepted. Counsel for the United States, excepted to leave for the petitioners to file their petitions.

WALTER H. SANBORN,
WILLIAM C. HOOK,
WALTER I. SMITH,
Circuit Judges.

Endorsed: Filed June 20th, 1914. W. W. Nall, Clerk.

61 (*Petition of Evens & Howard Fire Brick Co. et al. for Appeal.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants; Union Sand & Material Company and Evens & Howard Fire Brick Company, Interveners.

Petition for Appeal.

The above named petitioners, Union Sand & Material Company and Evens & Howard Fire Brick Company, conceiving themselves aggrieved by the decree and order made and entered on the 20th day of June A. D. 1914, — the above entitled cause, denying the prayers of their petitions filed in said cause praying for a modification of the final decree made in the above entitled cause, do hereby appeal from said order so made and entered on the 20th day of June 1914, to the Supreme Court of the United States, for the reason specified in the assignments of error which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record of proceedings and papers, together with the certified copy of said final decree upon which said order of June 20th, 1914, and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

JOHN F. LEE,
GEO. M. BLOCK,
Attorneys for Petitioners.

Dated June 20, 1914.

Endorsed: Filed June 20th, 1914. W. W. Nall, Clerk.

62 (*Assignment of Errors Filed by Evens & Howard Fire Brick Co. et al.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants; Union Sand & Material Company and Evens & Howard Fire Brick Company, Intervenors, Petitioners.

Now come the above named petitioners, Union Sand & Material Company and Evens & Howard Fire Brick Company, and file the following assignment of errors upon which they rely in their appeal

from the order and decree made by this Honorable Court on the 20th day of June A. D. 1914, denying the prayers of their petitions praying a modification of the final decree heretofore entered in this cause, and say that there is manifest error in the record of proceedings herein and in said order entered herein in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, and that the court erred therein in the following particulars, to-wit:

1st. Petitioners assign as error the action of the court in denying the prayers of the petitioners set forth in their petitions filed herein for the modification of the final decree entered in this cause. And in order that the foregoing assignments of error may appear of record the said petitioners present the same to the court and pray that such disposition may be made *therewith* as is in accordance with law and the statutes of the United States in such case made and provided, and petitioners pray for a reversal of said order denying the prayers of the petition-s in their petitions set forth and filed in the said cause.

63

JOHN F. LEE,
GEO. M. BLOCK,
Attorneys for Petitioners.

Dated June 20, 1914.

Endorsed: Filed June 20th, 1914, W. W. Nall, Clerk.

64 (*Order Granting Appeal to Evens & Howard Fire Brick Co. et al.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al.

Order.

The foregoing petition asking for an appeal in this case to the Union Sand & Material Co. & Evans & Howard Fire Brick Co., is hereby granted.

To which petition the counsel for the United States, objected at the time the same was presented, and to the order allowing the same, the counsel for the United States excepted, in open court.

WALTER H. SANBORN,
WILLIAM C. HOOK,
WALTER I. SMITH,
Circuit Judge.

Dated June 20, 1914.

Endorsed: Filed June 20th, 1914, W. W. Nall, Clerk.

65 (*Appeal Bond of Evens & Howard Fire Brick Co. et al.*)

Know all men by these presents: that we John F. Lee and Geo. M. Block do hereby agree and bind ourselves, our heirs & legal representatives unto the United States of America in the sum of Five Hundred Dollars well and truly to be paid upon condition that whereas an appeal has been granted to the Union Sand & Material Co. & Evens & Howard Fire Brick Co. from an order denying the petitions of said Union Sand & Material Co. & Evens & Howard Fire Brick Co. to amend the final decree in the case of United States of America vs. Terminal Railroad Ass'n et al. in the District Court of the United States for the Eastern Division of the Eastern District of Missouri now therefore if said appeal be prosecuted with effect & the above obligors shall pay all costs which may be assessed against said Union Sand & Material Co. & Evens & Howard Fire Brick Co. this undertaking shall be void; else to remain in full force & effect. Sealed & delivered in presence of

GEO. M. BLOCK. [SEAL.]
JOHN F. LEE. [SEAL.]

This undertaking and the security furnished thereby is hereby approved.

WALTER H. SANBORN,
WALTER I. SMITH,
WILLIAM C. HOOK,
Circuit Judges.

Endorsed: Filed June 20th, 1914, W. W. Nall, Clerk.

66 (*Election Filed by Evens & Howard Fire Brick Co. et al.*)

Intervening Petitioners' Election as to Printing Record.

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., Defendants; Union Sand & Material Company and Evens & Howard Fire Brick Company, Intervening Petitioners.

Intervening Petitioners' Election as to Printing Record.

Now come the Evens & Howard Fire Brick Company and the Union Sand & Material Company—intervenors and appellants in the above-entitled cause—and elect to have a full and complete typewritten transcript of the record and proceedings in the above-entitled

cause to be printed by, and under the supervision of, the Clerk of the United States Supreme Court.

JOHN F. LEE,
GEO. M. BLOCK,
Attorneys for Evens & Howard Fire Brick Co. and Union Sand & Material Company.

Endorsed: Filed June 23rd, 1914, W. W. Nall, Clerk.

67 (*Assignment of Errors. Filed by Complainant Mar. 27th, 1914.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, Complainant,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, ST. LOUIS Merchants' Bridge Terminal Railway Company, Wiggins Ferry Company, St. Louis Bridge Company, St. Louis Merchants' Bridge Company, Missouri, Kansas & Texas Railway Company, St. Louis & San Francisco Railway Company, The Chicago & Alton Railway Company, Baltimore & Ohio Southwestern Railroad Company, Illinois Central Railroad Company, St. Louis, Iron Mountain & Southern Railway Company, Chicago, Burlington & Quincy Railway Company, St. Louis, Vandalia & Terre Haute Railroad Company, The Wabash Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Louisville & Nashville Railroad Company, Southern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Missouri Pacific Railway Company, Central Trust Company of New York, A. A. Allen, S. M. Felton, A. J. Davidson, W. M. Green, J. T. Harahan, C. S. Clarke, H. Miller, Benjamin McKean, Joseph Ramsey, George E. Evans, C. E. Schaff, T. C. Powell, J. F. Stevens, A. G. Cochran, W. S. McChesney, Julius Walsh, V. W. Fisher, and S. D. Webster, Defendants.

Now comes the complainant above named and files the following assignment of errors upon which it will rely in its appeal from the decree made by this Honorable Court on the second day of March, 1914, in the above entitled cause, and says that there is manifest error in the record of proceedings herein and in said final decree entered herein in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, and that
68 the court erred therein in the following particulars, to-wit:—

I.

The complainant assigns as error the action of the court in denying the application and motion of the complainant to enter the interlocutory decree asked by the complainant.

II.

The complainant assigns as error the failure and refusal of the court upon the record in this cause to enter an interlocutory decree in accordance with the opinion of the Supreme Court directing the complainant and the defendants herein to submit to the court within ninety days after the receipt of the mandate of the Supreme Court herein a plan for the reorganization of the contract between the fourteen defendant railroad companies and the Terminal Railroad Association of St. Louis, Missouri, which plan should eliminate the violation of law pointed out by the Supreme Court as being a combination made by defendants within the inhibition of the act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraint and monopoly."

III.

The complainant assigns as error the failure and refusal of the court upon the record in this case to enter a final decree in accordance with the opinion of the Supreme Court effectively prohibiting the continuance of the combination, conspiracy and restraint of trade and commerce among the several states, as described in the complaint filed in this suit and found to exist by the Supreme Court and which said combination the Supreme Court decided was in violation of the act of Congress of July 2, 1890, to protect trade and commerce against restraint and monopoly.

IV.

The complainant assigns as error the failure and refusal of the court in denying the application and motion of the complainant to enter the final decree in the form as submitted and asked by the complainant.

V.

The complainant assigns as error the failure and refusal of the court to direct the defendants herein to act in connection
69 with the complainant in submitting to the court within ninety days after the receipt of the mandate in this case a plan for the reorganization of the contract between the fourteen defendant railroad companies and the Terminal Company so that the organization of the defendants and the operation of their properties and the contracts between defendants would cease to be in violation of the inhibition of the act of Congress of July 2, 1890.

VI.

The complainant assigns as error the entry by the court of the final decree in this case as made and filed the second of March, 1914, in the office of the clerk of the District Court of the United States in

and for the Eastern Division of the Eastern Judicial District of Missouri, because said final decree as entered is not in accordance with the opinion of the Supreme Court heretofore rendered in this cause, and does not effectively carry out the mandate of the Supreme Court so as to prevent the continuance by the defendants of the violation of the Act of Congress against restraint of trade and monopoly of July 2, 1890.

VII.

The complainant assigns as error the failure of the court to provide in its final decree the exact form and conditions of a contract which should be executed between the defendants and a company or companies asking either joint use or joint ownership of the terminal facilities controlled by the defendants.

VIII.

The complainant assigns as error the failure of the court to designate specifically in its final decree what contracts should have stricken out of them the portions thereof ordered eliminated by the opinion and mandate of the Supreme Court.

IX.

The complainant assigns as error the action of the court in placing in its final decree the precise words, without more, of the fifth paragraph of the Supreme Court's order relating to the arbitrary charge in respect of traffic originating within the one-hundred mile
70 area, because to merely put the precise words of the fifth paragraph in the decree without more does not end litigation but establishes a starting point for further controversy.

X.

The complainant assigns as error the action of the court in entering a final decree herein permitting the defendants to continue the existing organization of the Terminal Company and the combination for the operation between the Terminal Company and the Wiggins Ferry Company and the Merchants Company and the several companies related to these above named corporations, after the complainant and the defendants had failed to come to an agreement in substantial accord with the opinion and decree of the Supreme Court because the order of the Supreme Court provided for a dissolution and not a continuance of the combination between said three above named corporations, the Wiggins, Terminal and Merchants Companies, upon the failure of the parties complainant and defendants to come to an agreement in accordance with the opinion of the Supreme Court and its decree.

In order that the foregoing assignment of errors may be and appear of record, the complainant presents the same to the Court and prays that such disposition be made therewith as is in accord-

ance with law and the statutes of the United States in such case made and provided, and complainant prays a reversal of said decretal order and decree made and entered by said court and a decree entered in accordance with the directions contained in the decree of reversal of this cause by the Supreme Court of the United States and its opinion filed with the latter decree.

(Signed) EDWARD C. CROW,
Special Assistant to the Attorney General.

Endorsed: Filed March 27th 1914, W. W. Nall, Clerk.

71 (*Petition for Appeal. Filed by Complainant Mar. 27th, 1914.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, Complainant,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, ST. LOUIS MERchants' Bridge Terminal Railway Company, Wiggins Ferry Company, St. Louis Bridge Company, St. Louis Merchants' Bridge Company, Missouri, Kansas & Texas Railway Company, St. Louis & San Francisco Railway Company, The Chicago & Alton Railway Company, Baltimore & Ohio Southwestern Railroad Company, Illinois Central Railroad Company, St. Louis, Iron Mountain & Southern Railway Company, Chicago, Burlington & Quincy Railway Company, St. Louis, Vandalia & Terre Haute Railroad Company, The Wabash Railroad Company, Louisville & Nashville Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, The Missouri Pacific Railway Company, Southern Railway Company, Central Trust Company of New York, The Chicago, Rock Island & Pacific Railway Company, A. A. Allen, S. M. Felton, A. J. Davidson, W. M. Green, J. T. Harahan, C. S. Clarke, H. Miller, Benjamin McKean, Joseph Ramsey, George E. Evans, C. F. Schaff, T. C. Powell, J. F. Stevens, A. G. Cochran, W. S. McChesney, Julius Walsh, V. W. Fisher, and S. D. Webster, Defendants.

The above named complainant conceiving itself aggrieved by the decree made and entered on the second day of March, 1914, in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the records, proceedings and papers upon which said order and degree was made, duly authenticated, may be sent to the Supreme Court of the United States

72 (Signed) EDWARD C. CROW,
Special Assistant to the Attorney General.

——— ———,
Special Assistant to the Attorney General.

Dated at St. Louis, Missouri, March 27, 1914.

The foregoing petition for appeal is granted and the claim of appeal therein made is allowed.

Done in open court this 27th day of March, 1914.

(Signed) WALTER H. SANBORN,
Senior Circuit Judge.

Endorsed: Filed March 27th, 1914. W. W. Nall, Clerk.

73 (*Clerk's Certificate.*)

UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I, W. W. Nall, Clerk of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings, upon the appeal taken by the Evens & Howard Fire Brick Company and the Union Sand & Material Company, intervening petitioners, in the cause No. 5250, entitled United States of America, complainant, versus Terminal Railroad Association of St. Louis, et al., defendants, (save as restricted by the præcipes of the said petitioners and of the United States of America hereinbefore set forth), together with all things of and concerning the same, as fully as the same remain on file and of record in said cause in my office; and that the original Citation is hereto attached and herewith returned.

In Witness Whereof, I hereunto set my hand and affix the seal of said District Court, at office in the City of St. Louis, this 11th day of July 1914.

[Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.]

W. W. NALL,
Clerk of said District Court.

Endorsed on cover: File No. 24,311. E. Missouri D. C. U. S. Term No. 567. Evens and Howard Fire Brick Company and Union Sand and Material Company, appellants, vs. The United States. Filed July 15, 1914. File No. 24,311.